Supreme Court of the United States.

Nos. 567, 664, 665, 666, 667, 668, 669.—October Term, 1906.

567. William H. Ellis, Plaintiff in Error, *vs.* The United States.	In Error to the District Court of the United States for the District of Massachusetts.
664. Eastern Dredging Company, Plaintiff in Error, *vs.* The United States.	
665. Same *vs.* Same.	
666. Same *vs.* Same.	
667. Bay State Dredging Company, Plaintiff in Error, *vs.* The United States.	
668. Same *vs.* Same.	
669. Same *vs.* Same.	

[May 13, 1907.]

Mr. Justice Holmes delivered the opinion of the Court.

These are an indictment and informations under the Act of August 1, 1892, c. 352, 27 Stat. 340, "Relating to the Limitation of the Hours of Daily Service of Laborers and Mechanics Employed upon the Public Works of the United States and of the District of Columbia." They all bring up the question of the constitutionality of the Act, and they severally present some subordinate matters, which will be considered under the respective cases.

The Act limits the service and employment of all laborers and mechanics employed by the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or the District, to eight hours in any one calendar day, and makes it unlawful "to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency." By § 2 "any officer or agent of the Government

of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the Court having jurisdiction thereof." The plaintiffs in error were contractors within the scope of the Act, were found guilty and were fined. They all requested rulings that the Act was unconstitutional, excepted to the refusal so to rule, and on that ground brought their cases to this Court.

The contention that the Act is unconstitutional is not frivolous, since it may be argued that there are relevant distinctions between the power of the United States and that of a State. But the arguments naturally urged against such a statute apply equally for the most part to the two jurisdictions, and are answered, so far as a State is concerned, by *Atkin* v. *Kansas*, 191 U. S. 207. In that case a contractor for work upon a municipal boulevard was sentenced to a fine under a similar law of Kansas, and the statute was upheld. We see no reason to deny to the United States the power thus established for the States. Like the States, it may sanction the requirements made of contractors employed upon its public works by penalties in case those requirements are not fulfilled. It would be a strong thing to say that a legislature that had power to forbid or to authorize and enforce a contract had not also the power to make a breach of it criminal, but however that may be, Congress, as incident to its power to authorize and enforce contracts for public works, may require that they shall be carried out only in a way consistent with its views of public policy, and may punish a departure from that way. It is true that it has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed cannot be limited by a speculation as to motives. If the motive be conceded, however, the fact that Congress has not general control over the conditions of labor does not make unconstitutional a law otherwise valid, because the purpose of the law is to secure to it certain advantages, so far as the law goes.

One other argument is put forward, but it hardly needs an answer. A ruling was asked in Ellis's case, and is attempted to be sustained, to the effect that the Government waived its sovereignty by making a contract, and that even if the Act of 1892 were read into the contract, a breach of its requirements would be only a breach of contract and could not be

made a crime. This is a mere confusion of ideas. The Government purely as contractor, in the absence of special laws, may stand like a private person, but by making a contract it does not give up its power to make a law, and it may make a law like the present for the reasons that we have stated. We are of opinion that the Act is not contrary to the Constitution of the United States.

We pass to the subordinate matters not common to all the cases. In Ellis's case the plaintiff in error agreed to construct and complete pier No. 2 at the Boston Navy Yard, within six months, according to certain specifications and at a certain price. He found more difficulty than he expected, although he expected some trouble, in getting certain oak and pine piles called for by the contract, and, having been delayed by that cause, he permitted his associate in the business to employ men for nine hours, in the hurry to get the work done. The judge instructed the jury that the evidence did not show an 'extraordinary emergency' within the meaning of Act. The judge was right in ruling upon the matter. Even if, as in other instances, a nice case might be left to the jury, what emergencies are within the statute is merely a constituent element of a question of law, since the determination of that element determines the extent of the statutory prohibition and is material only to that end.—The ruling was correct. It needs no argument to show that the disappointment of a contractor with regard to obtaining some of his materials, a matter which he knew involved some difficulty of which he took the risk, does not create such an emergency as is contemplated in the exception to the law. Again the construction of the pier was desirable for the more convenient repair of war ships, but it was not essential. Vessels had been docked without it since 1835 or 1836, so that there was no hot haste on that account, if under any circumstances that kind of need would have been enough.

There is only one other question raised in Ellis's case. It is admitted that he was a contractor within the meaning of the Act and that the workmen permitted to work more than eight hours a day were employed upon 'public works,' and it is not denied that these workmen were 'mechanics.' The jury were instructed, subject to exception, that if the defendant intended to permit the men to work over eight hours on the calendar day named he intended to violate the statute. The argument against the instruction is that the word 'intentionally' in the statute requires knowledge of the law, or at least that to be convicted Ellis must not have supposed, even mistakenly, that there was an emergency extraordinary enough to justify his conduct. The latter proposition is only the former a little disguised. Both are without foundation. If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally

breaks the law in the only sense in which the law ever considers intent. The judgment in this case must be affirmed.

The three cases against the Eastern Dredging Company were informations for employing certain men, alleged to be laborers or mechanics, more than eight hours a day upon what was alleged to be one of the public works of the United States, viz., dredging a portion of the thirty-five foot channel, so called, in Boston Harbor. The cases against the Bay State Dredging Company were similar, except that the place was Chelsea Creek in Boston Harbor. Of the former, No. 664 was in three counts for employing two deck hands and an assistant craneman and deck hand upon a dredge; No. 665 was for employing the master, craneman and fireman of the dredge; and No. 666 was for employing the captain, mate, engineer, and foreman of a tug that towed a scow, &c., and a man in charge of the scow. Of the Bay State Dredging Company cases, No. 667 was for employing the captain, mate and fireman of a dredge; No. 668 was for employing a craneman and deck hand on the dredge; and No. 669 was for employing a scow man and the captain and engineer of a tug. The offences were admitted or proved subject to the questions that already have been considered, and to the further questions whether the dredging was upon one of the public works of the United States and whether the persons employed were laborers or mechanics within the meaning of the Act, with one or two lesser points that will not need to be discussed.

Both of the phrases to be construed admit a broad enough interpretation to cover these cases, but the question is whether that interpretation is reasonable, and, in a penal statute, fair. Certainly they may be read in a narrower sense with at least equal ease. The statute says, "laborers and mechanics . . . employed . . . upon any of the public works." It does not say, and no one supposes it to mean, 'any public work.' The words 'upon' and 'any of the,' and the plural 'works' import that the objects of labor referred to have some kind of permanent existence and structural unity, and are severally capable of being regarded as complete wholes. The fact that the persons mentioned as employed upon them are laborers and mechanics, words admitted not to include seamen, points in the direction of structures and away from the sea. The very great difficulty, if not impossibility, of dredging in the ocean, if such a law is to govern it, is a reason for giving the defendants the benefit of a doubt; and the fact that until last year the Government worked dredging crews more than eight hours is a practical construction not without its weight. A change seems to have been made simply for the sake of consistency between the different departments of the Government, as is stated in an order of the Secretary of War. A different conclusion is sought to be drawn from some appropriation acts, but they simply refer to the improvement of harbors in general

terms among the public works for which appropriations are made. The improvement of a harbor may consist in the erection of structures as well as in the widening of a channel, or the explosion of a rock. It is unnecessary to lay special stress on the title to the soil in which the channels were dug, but it may be noticed that is was not in the United States. The language of the Acts is "public works of the United States." As the works are things upon which the labor is expended, the most natural meaning of 'of the United States' is belonging to the United States.

The words laborers and mechanics are admitted not to apply to seamen as that name commonly is used. Therefore it was contended but faintly that the masters of the tugs could not be employed more than eight hours. But the argument does not stop with masters of tugs, or even with mates, engineers and firemen of the same. *Wilson* v. *The Ohio*, Gilpin, 505. *Holt* v. *Cummings*, 102 Penn. St. 212. The scows and the floating dredges were vessels. Rev. St. §§ 3, 4612. They were within the admiralty jurisdiction of the United States. *The Robert W. Parsons*, 191 U. S. 17. (A number of cases as to dredges in the Circuit and District Courts are referred to in *Brown Hydraulic Dredging Co.* v. *Federal Contracting Co.*, 148 Fed. Rep. 290.) Therefore all of the hands mentioned in the informations were seamen within the definition in an earlier statute of the United States. Rev. Sts. § 4612. *Saylor* v. *Taylor*, 77 Fed. Rep. 476. s. c., 23 C. C. A. 343. See also Act of March 3, 1875, c. 156, § 3. 18 Stat. 485; *Bean* v. *Stupart*, 1 Dougl. 11; *Disbrow* v. *The Walsh Brothers*, 36 Fed. Rep. 607. They all require something of the training and are liable to be called upon for more or less of the services required of ordinary seamen. The reasons which exclude the latter from the statute apply, although perhaps in a less degree, to them. Whatever the nature of their work it is incident to their employment on the dredges and scows as in the case of an engineer or coal shoveller on board ship. Without further elaboration of details we are of opinion that the persons employed by the two defendant companies were not laborers or mechanics and were not employed upon any of the public works of the United States within the meaning of the Act. As in other cases where a broad distinction is admitted, it ultimately becomes necessary to draw a line, and the determination of the precise place of that line in nice cases always seems somewhat technical, but still the line must be drawn.

Judgment in 567 affirmed.

Judgments in 664, 665, 666, 667, 668 and 669 reversed.

Mr. Justice MOODY took no part in the decision of 567.

Mr. Justice MCKENNA is of opinion that the work upon the dredging of Chelsea Creek was within the Act. In other particulars he agrees with the judgment of the Court.